

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1239

Introduced by Assembly Member Holden

February 22, 2013

An act to ~~amend Section 6108~~ add Part 6 (commencing with Section 22356) to Division 2 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1239, as amended, Holden. Public contracts: ~~certification: labor conditions: sweatshops: anti-trafficking.~~

Existing law ~~requires specified contracts entered into by state agencies to require contractors to~~ establishes specified requirements applicable to contracts entered into by state agencies, including, among other things, that a contractor certify that no apparel, garments, corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to ~~the a contract have~~ has been laundered or produced by various unauthorized and exploitive labor conditions, such as sweatshops, as prescribed.

This bill would ~~make nonsubstantive changes to those provisions prohibit a contractor, as defined, that has entered into a contractual relationship with a public entity from engaging in trafficking-related activities, including destroying, concealing, confiscating, or otherwise denying access to the employee's identity documents, such as passports or drivers' licenses.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Part 6 (commencing with Section 22356) is added*
2 *to Division 2 of the Public Contract Code, to read:*

3
4 *PART 6. ANTI-TRAFFICKING*
5

6 22356. *For purposes of this part, the following definitions*
7 *apply:*

8 (a) *“Contractor” means any individual, corporation,*
9 *partnership, business entity, joint venture or association, or any*
10 *other organization or any combination thereof, that has entered*
11 *into a contractual relationship with any public entity.*

12 (b) *“Public entity” means the state, county, city, city and county,*
13 *district, public authority, public agency, municipal corporation,*
14 *or any other political subdivision or public corporation in the*
15 *state.*

16 22357. *A contractor shall not engage in trafficking-related*
17 *activities including, destroying, concealing, confiscating, or*
18 *otherwise denying access to the employee’s identity documents,*
19 *such as passports or driver’s licenses.*

20 ~~SECTION 1. Section 6108 of the Public Contract Code is~~
21 ~~amended to read:~~

22 ~~6108. (a) (1) Each contract entered into by a state agency for~~
23 ~~the procurement or laundering of apparel, garments, or~~
24 ~~corresponding accessories, or the procurement of equipment,~~
25 ~~materials, or supplies, other than procurement related to a public~~
26 ~~works contract, shall require that a contractor certify that no~~
27 ~~apparel, garments, corresponding accessories, equipment, materials,~~
28 ~~or supplies furnished to the state pursuant to the contract have been~~
29 ~~laundered or produced in whole or in part by sweatshop labor,~~
30 ~~forced labor, convict labor, indentured labor under penal sanction,~~
31 ~~abusive forms of child labor, or exploitation of children in~~
32 ~~sweatshop labor, or with the benefit of sweatshop labor, forced~~
33 ~~labor, convict labor, indentured labor under penal sanction, abusive~~
34 ~~forms of child labor, or exploitation of children in sweatshop labor.~~
35 ~~The contractor shall agree to comply with this provision of the~~
36 ~~contract.~~

37 ~~(2) The contract shall specify that the contractor is required to~~
38 ~~cooperate fully in providing reasonable access to the contractor’s~~

1 records, documents, agents, employees, or premises if reasonably
2 required by authorized officials of the contracting agency, the
3 Department of Industrial Relations, or the Department of Justice
4 determine the contractor's compliance with the requirements under
5 paragraph (1):

6 ~~(b) (1) Any contractor contracting with the state who knew or~~
7 ~~should have known that the apparel, garments, corresponding~~
8 ~~accessories, equipment, materials, or supplies furnished to the state~~
9 ~~were laundered or produced in violation of the conditions specified~~
10 ~~in subdivision (a) when entering into a contract pursuant to~~
11 ~~subdivision (a), may, subject to subdivision (c), have any or all of~~
12 ~~the following sanctions imposed:~~

13 ~~(A) The contract under which the prohibited apparel, garments,~~
14 ~~or corresponding accessories, equipment, materials, or supplies~~
15 ~~were laundered or provided may be voided at the option of the~~
16 ~~state agency to which the equipment, materials, or supplies were~~
17 ~~provided.~~

18 ~~(B) The contractor may be assessed a penalty that shall be the~~
19 ~~greater of one thousand dollars (\$1,000) or an amount equaling~~
20 ~~20 percent of the value of the apparel, garments, corresponding~~
21 ~~accessories, equipment, materials, or supplies that the state agency~~
22 ~~demonstrates were produced in violation of the conditions specified~~
23 ~~in paragraph (1) of subdivision (a) and that were supplied to the~~
24 ~~state agency under the contract.~~

25 ~~(C) The contractor may be removed from the bidder's list for a~~
26 ~~period not to exceed 360 days.~~

27 ~~(2) Any moneys collected pursuant to this subdivision shall be~~
28 ~~deposited into the General Fund.~~

29 ~~(c) (1) When imposing the sanctions described in subdivision~~
30 ~~(b), the contracting agency shall notify the contractor of the right~~
31 ~~to a hearing, if requested, within 15 days of the date of the notice.~~
32 ~~The hearing shall be before an administrative law judge of the~~
33 ~~Office of Administrative Hearings in accordance with the~~
34 ~~procedures specified in Chapter 5 (commencing with Section~~
35 ~~11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~
36 ~~The administrative law judge shall take into consideration any~~
37 ~~measures the contractor has taken to ensure compliance with this~~
38 ~~section, and may waive any or all of the sanctions if it is determined~~
39 ~~that the contractor has acted in good faith.~~

1 ~~(2) The agency shall be assessed the cost of the administrative~~
2 ~~hearing, unless the agency has prevailed in the hearing, in which~~
3 ~~case the contractor shall be assessed the cost of the hearing.~~

4 ~~(d) (1) Any state agency that investigates a complaint against~~
5 ~~a contractor for violation of this section may limit its investigation~~
6 ~~to evaluating the information provided by the person or entity~~
7 ~~submitting the complaint and the information provided by the~~
8 ~~contractor.~~

9 ~~(2) Whenever a contracting officer of the contracting agency~~
10 ~~has reason to believe that the contractor failed to comply with~~
11 ~~paragraph (1) of subdivision (a), the agency shall refer the matter~~
12 ~~for investigation to the head of the agency and, as the head of the~~
13 ~~agency determines appropriate, to either the Director of Industrial~~
14 ~~Relations or the Department of Justice.~~

15 ~~(e) (1) For purposes of this section, "forced labor" shall have~~
16 ~~the same meaning as in Section 1307 of Title 19 of the United~~
17 ~~States Code.~~

18 ~~(2) "Abusive forms of child labor" means any of the following:~~

19 ~~(A) All forms of slavery or practices similar to slavery, such as~~
20 ~~the sale and trafficking of children, debt bondage, and serfdom~~
21 ~~and forced or compulsory labor, including forced or compulsory~~
22 ~~recruitment of children for use in armed conflict.~~

23 ~~(B) The use, procuring, or offering of a child for prostitution,~~
24 ~~for the production of pornography, or for pornographic~~
25 ~~performances.~~

26 ~~(C) The use, procuring, or offering of a child for illicit activities,~~
27 ~~in particular for the production and trafficking of illicit drugs.~~

28 ~~(D) All work or service exacted from or performed by any~~
29 ~~person under the age of 18 years either under the menace of any~~
30 ~~penalty for its nonperformance and for which the worker does not~~
31 ~~offer oneself voluntarily, or under a contract, the enforcement of~~
32 ~~which can be accomplished by process or penalties.~~

33 ~~(E) All work or service exacted from or performed by a child~~
34 ~~in violation of all applicable laws of the country of manufacture~~
35 ~~governing the minimum age of employment, compulsory education,~~
36 ~~and occupational health and safety.~~

37 ~~(3) "Exploitation of children in sweatshop labor" means all~~
38 ~~work or service exacted from or performed by any person under~~
39 ~~the age of 18 years in violation of more than one law of the country~~

1 of manufacture governing wage and benefits, occupational health
2 and safety, nondiscrimination, and freedom of association.

3 (4) ~~“Sweatshop labor” means all work or service exacted from~~
4 ~~or performed by any person in violation of more than one law of~~
5 ~~the country of manufacture governing wages, employee benefits,~~
6 ~~occupational health, occupational safety, nondiscrimination, or~~
7 ~~freedom of association.~~

8 (5) ~~“Apparel, garments, or corresponding accessories” includes,~~
9 ~~but is not limited to, uniforms.~~

10 (6) ~~Notwithstanding any other provision of this section, “forced~~
11 ~~labor” and “convict labor” shall not include work or services~~
12 ~~performed by an inmate or a person employed by the Prison~~
13 ~~Industry Authority.~~

14 (7) ~~“State agency” means any state agency in this state.~~

15 (f) (1) ~~On or before February 1, 2004, the Department of~~
16 ~~Industrial Relations shall establish a contractor responsibility~~
17 ~~program, including a Sweatfree Code of Conduct, to be signed by~~
18 ~~all bidders on state contracts and subcontracts. Any state agency~~
19 ~~responsible for procurement shall ensure that the Sweatfree Code~~
20 ~~of Conduct is available for public review at least 30 calendar days~~
21 ~~between the dates of receipt and the final award of the contract.~~
22 ~~The Sweatfree Code of Conduct shall list the requirements that~~
23 ~~contractors are required to meet, as set forth in subdivision (g).~~

24 (2) ~~Upon implementation in the manner described in paragraph~~
25 ~~(4), every contract entered into by any state agency for the~~
26 ~~procurement or laundering of apparel, garments, or corresponding~~
27 ~~accessories, or for the procurement of equipment or supplies, shall~~
28 ~~require that the contractor certify in accordance with the Sweatfree~~
29 ~~Code of Conduct that no apparel, garments, or corresponding~~
30 ~~accessories, or equipment, materials, or supplies, furnished to the~~
31 ~~state pursuant to the contract have been laundered or produced, in~~
32 ~~whole or in part, by sweatshop labor.~~

33 (3) ~~The appropriate procurement agency, in consultation with~~
34 ~~the Director of Industrial Relations, shall employ a phased and~~
35 ~~targeted approach to implementing the Sweatfree Code of Conduct.~~
36 ~~Sweatfree Code of Conduct procurement policies involving apparel,~~
37 ~~garments, and corresponding accessories may be permitted a~~
38 ~~phase in period of up to one year for purposes of feasibility and~~
39 ~~providing sufficient notice to contractors and the general public.~~
40 ~~The appropriate procurement agency, in consultation with the~~

1 Director of Industrial Relations, shall target other procurement
2 categories based on the magnitude of verified sweatshop conditions
3 and the feasibility of implementation, and may set phasein goals
4 and timetables of up to three years to achieve compliance with the
5 principles of the Sweatfree Code of Conduct.

6 (4) In order to facilitate compliance with the Sweatfree Code
7 of Conduct, the Department of Industrial Relations shall explore
8 mechanisms employed by other governmental entities, including,
9 but not limited to, New Jersey Executive Order 20, of 2002, to
10 ensure that businesses that contract with this state are in compliance
11 with this section and any regulations or requirements promulgated
12 in conformance with this section, as amended by Section 2 of
13 Chapter 711 of the Statutes of 2003. The mechanisms explored
14 may include, but not be limited to, authorization to contract with
15 a competent nonprofit organization that is neither funded nor
16 controlled, in whole or in part, by a corporation that is engaged in
17 the procurement or laundering of apparel, garments, or
18 corresponding accessories, or the procurement of equipment,
19 materials, or supplies. The Department of Industrial Relations, in
20 complying with this paragraph, shall also consider any feasible
21 and cost-effective monitoring measures that will encourage
22 compliance with the Sweatfree Code of Conduct.

23 (5) To ensure public access and confidence, the Department of
24 Industrial Relations shall ensure public awareness and access to
25 proposed contracts by postings on the Internet and through
26 communication to advocates for garment workers, unions, and
27 other interested parties. The appropriate agencies shall establish
28 a mechanism for soliciting and reviewing any information
29 indicating violations of the Sweatfree Code of Conduct by
30 prospective or current bidders, contractors, or subcontractors. The
31 agencies shall make their findings public when they reject
32 allegations against bidding or contracting parties.

33 (6) Contractors shall ensure that their subcontractors comply in
34 writing with the Sweatfree Code of Conduct, under penalty of
35 perjury. Contractors shall attach a copy of the Sweatfree Code of
36 Conduct to the certification required by subdivision (a).

37 (g) A state agency shall not enter into a contract with any
38 contractor unless the contractor meets the following requirements:

39 (1) Contractors and subcontractors in California shall comply
40 with all appropriate state laws concerning wages, workplace safety,

1 rights to association and assembly, and nondiscrimination standards
2 as well as appropriate federal laws. Contractors based in other
3 states in the United States shall comply with all appropriate laws
4 of their states and appropriate federal laws. For contractors whose
5 locations for manufacture or assembly are outside the United States,
6 those contractors shall ensure that their subcontractors comply
7 with the appropriate laws of countries where the facilities are
8 located.

9 (2) ~~Contractors and subcontractors shall maintain a policy of~~
10 ~~not terminating any employee except for just cause, and employees~~
11 ~~shall have access to a mediator or to a mediation process to resolve~~
12 ~~certain workplace disputes that are not regulated by the National~~
13 ~~Labor Relations Board.~~

14 (3) ~~Contractors and subcontractors shall ensure that workers~~
15 ~~are paid, at a minimum, wages and benefits in compliance with~~
16 ~~applicable local, state, and national laws of the jurisdiction in which~~
17 ~~the labor, on behalf of the contractor or subcontractor, is performed.~~
18 ~~Whenever a state agency expends funds for the procurement or~~
19 ~~laundrying of apparel, garments, or corresponding accessories, or~~
20 ~~the procurement of equipment, materials, or supplies, other than~~
21 ~~procurement related to a public works contract, the applicable~~
22 ~~labor standards established by the local jurisdiction through the~~
23 ~~exercise of either local police powers or local spending powers in~~
24 ~~which the labor, in compliance with the contract or purchase order~~
25 ~~for which the expenditure is made, is performed shall apply with~~
26 ~~regard to the contract or purchase order for which the expenditure~~
27 ~~is made, unless the applicable local standards are in conflict with,~~
28 ~~or are explicitly preempted by, state law. A state agency may not~~
29 ~~require, as a condition for the receipt of state funds or assistance,~~
30 ~~that a local jurisdiction refrain from applying the labor standards~~
31 ~~that are otherwise applicable to that local jurisdiction. The~~
32 ~~Department of Industrial Relations may, without incurring~~
33 ~~additional expenses, access information from any nonprofit~~
34 ~~organization, including, but not limited to, the World Bank, that~~
35 ~~gathers and disseminates data with respect to wages paid~~
36 ~~throughout the world, to allow the Department of Industrial~~
37 ~~Relations to determine whether contractors and subcontractors are~~
38 ~~compensating their employees at a level that enables those~~
39 ~~employees to live above the applicable poverty level.~~

1 ~~(4) All contractors and subcontractors shall comply with the~~
2 ~~overtime laws and regulations of the country in which their~~
3 ~~employees are working.~~

4 ~~(5) All overtime hours shall be worked voluntarily. Workers~~
5 ~~shall be compensated for overtime at either (A) the rate of~~
6 ~~compensation for regular hours of work, or (B) as legally required~~
7 ~~in the country of manufacture, whichever is greater.~~

8 ~~(6) A person shall not be employed who is younger than the~~
9 ~~legal age for children to work in the country in which the facility~~
10 ~~is located. In no case may children under the age of 15 years be~~
11 ~~employed in the manufacturing process. Where the age for~~
12 ~~completing compulsory education is higher than the standard for~~
13 ~~the minimum age of employment, the age for completing education~~
14 ~~shall apply to this section.~~

15 ~~(7) There may be no form of forced labor of any kind, including~~
16 ~~slave labor, prison labor, indentured labor, or bonded labor,~~
17 ~~including forced overtime hours.~~

18 ~~(8) The work environment shall be safe and healthy and, at a~~
19 ~~minimum, be in compliance with relevant local, state, and national~~
20 ~~laws. If residential facilities are provided to workers, those facilities~~
21 ~~shall be safe and healthy as well.~~

22 ~~(9) There may be no discrimination in hiring, salary, benefits,~~
23 ~~performance evaluation, discipline, promotion, retirement, or~~
24 ~~dismissal on the basis of age, sex, pregnancy, maternity leave~~
25 ~~status, marital status, race, nationality, country of origin, ethnic~~
26 ~~origin, disability, sexual orientation, gender identity, religion, or~~
27 ~~political opinion.~~

28 ~~(10) A worker shall not be subjected to any physical, sexual,~~
29 ~~psychological, or verbal harassment or abuse, including corporal~~
30 ~~punishment, under any circumstances, including, but not limited~~
31 ~~to, retaliation for exercising his or her right to free speech and~~
32 ~~assembly.~~

33 ~~(11) A worker shall not be forced to use contraceptives or take~~
34 ~~pregnancy tests. A worker shall not be exposed to chemicals,~~
35 ~~including glues and solvents, that endanger reproductive health.~~

36 ~~(12) Contractors and bidders shall list the names and addresses~~
37 ~~of each subcontractor to be utilized in the performance of the~~
38 ~~contract, and list each manufacturing or other facility or operation~~
39 ~~of the contractor or subcontractor for performance of the contract.~~
40 ~~The list, which shall be maintained and updated to show any~~

1 ~~changes in subcontractors during the term of the contract, shall~~
2 ~~provide company names, owners or officers, addresses, telephone~~
3 ~~numbers, e-mail addresses, and the nature of the business~~
4 ~~association.~~

5 (h) ~~Any person who certifies as true any material matter pursuant~~
6 ~~to this section that he or she knows to be false is guilty of a~~
7 ~~misdemeanor.~~

8 (i) ~~The provisions of this section, as amended by Section 2 of~~
9 ~~Chapter 711 of the Statutes of 2003, shall be in addition to any~~
10 ~~other provisions that authorize the prosecution and enforcement~~
11 ~~of local labor laws and may not be interpreted to prohibit a local~~
12 ~~prosecutor from bringing a criminal or civil action against an~~
13 ~~individual or business that violates the provisions of this section.~~

14 (j) (1) ~~The certification requirements set forth in subdivisions~~
15 ~~(a) and (f) shall not apply to a credit card purchase of goods of~~
16 ~~two thousand five hundred dollars (\$2,500) or less.~~

17 (2) ~~The total amount of exemption authorized herein shall not~~
18 ~~exceed seven thousand five hundred dollars (\$7,500) per year for~~
19 ~~each company from which a state agency is purchasing goods by~~
20 ~~credit card. It shall be the responsibility of each state agency to~~
21 ~~monitor the use of this exemption and adhere to these restrictions~~
22 ~~on these purchases.~~